

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs

1988

Sweeney Land Company; Melvin fletcher and Peggy Fletcher v. Gilbert Kimball and Maud Kimball, et al. : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Robert Felton; Gerald Kinghorn; Kapaloski, Kinghorn and Peters; Attorney for Respondents.

Paul D. Veasy; Biele, Haslam and Hatch; Attorneys for Appellant.

Recommended Citation

Brief of Appellant, *Sweeney Land Company v. Kimball*, No. 880080.00 (Utah Supreme Court, 1988).

https://digitalcommons.law.byu.edu/byu_sc1/1960

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
KFU

IN THE SUPREME COURT OF THE STATE OF UTAH

50

.A10

DOCKET NO. 880080-CA Plaintiff and Appellant,

v.

GILBERT KIMBALL and MAUD KIMBALL,
et al.,

Defendants and Respondents,

88-0080-CA

Case No. 860083

GILBERT KIMBALL and MAUD KIMBALL,
et al.,

Crossclaim Plaintiffs
and Respondents,

v.

MELVIN FLETCHER and PEGGY FLETCHER,
et al.,

Counterclaim-cross-
claimants and Respondents.

APPEAL OF A JUDGMENT FROM THE
DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT, SUMMIT COUNTY, STATE OF UTAH

HONORABLE J. DENNIS FREDERICK, JUDGE

BRIEF OF APPELLANT

Robert Felton (1056)
Attorney for Defendants and
Respondents, Gilbert and Maud
Kimball
5 Triad Center, Suite 585
Salt Lake City, Utah 84180
Telephone: (801) 359-9216

Paul D. Veasy (3964)
BIELE, HASLAM & HATCH
Attorneys for Plaintiff and Appellant,
Sweeney Land Company
50 West Broadway, Fourth Floor
Salt Lake City, Utah 84101
Telephone: (801) 328-1666

Gerald Kinghorn (1825)
KAPALOSKI, KINGHORN & PETERS
Attorneys for Counterclaim-crossclaimants and
Respondents, Melvin Fletcher and Peggy Fletcher
9 Exchange Place, Suite 1000
Salt Lake City, Utah 84111
Telephone: (801) 364-8644

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
ISSUE PRESENTED FOR REVIEW	1
STATUTES, ORDINANCES, RULES, ETC.,	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENTS	8
ARGUMENT	9

THE TRIAL COURT ERRED IN FAILING TO QUIET TITLE
TO THE THIRTY-FOOT BY SIXTY-ONE FOOT STRIP OF
PROPERTY IN THE NAME OF SWEENEY LAND COMPANY
ALONG WITH THE ADDITIONAL CONTIGUOUS PIECE OF
PROPERTY LOCATED TO THE NORTH OF SAID PROPERTY.

CONCLUSION	16
ADDENDUM	17

TABLE OF AUTHORITIES

PAGE

CASES

<u>Crane v. Crane</u> , 683 P.2d 1062 (Utah 1984).	15
<u>Dixon v. Morse</u> , 93 Idaho 448, 463 P.2d 284 (1970). . . .	14
<u>Dugan v. Jones</u> , 39 Utah Adv. Rep. 37, No. 20199 (August 7, 1986).	10
<u>Home Owners Loan Corp. v. Dudley</u> , 105 Utah 208, 141 P.2d 160 (1943)	14
<u>Neeley v. Kelcsh</u> , 600 P.2d 979 (Utah 1979)	14
<u>Olwell v. Clark</u> , 658 P.2d 585 (Utah 1982).	10
<u>Parsons v. Anderson</u> , 690 P.2d 535 (Utah 1984).	14

STATUTES

Utah Code Ann. §78-12-7 (1977)	1, 10
Utah Code Ann. §78-12-12 (1977).	1, 14
Utah Code Ann. §78-40-1 (1977)	1, 2

ISSUE PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT ERRED IN FAILING TO QUIET TITLE TO THE THIRTY-FOOT BY SIXTY-ONE FOOT STRIP OF PROPERTY IN THE NAME OF SWEENEY LAND COMPANY ALONG WITH THE ADDITIONAL CONTIGUOUS PIECE OF PROPERTY LOCATED TO THE NORTH OF SAID PROPERTY.

STATUTES, ORDINANCES, RULES, ETC.

78-12-7. Adverse possession - Possession presumed in owner. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property shall be presumed to have been possessed thereof within the time required by law; and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appears that the property has been held and possessed adversely to such legal title for seven years before the commencement of this action.

Utah Code Ann. §78-12-7 (1977)

78-12-12. Possession must be continuous, and taxes paid. In no case shall adverse possession be considered established under the provisions of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and that the party, his predecessors and grantors have paid all taxes which have been levied and assessed upon such land according to law.

Utah Code Ann. §78-12-12 (1977)

78-40-1. Action to determine adverse claim to property - Authorized. An action may be brought by any person against another who claims an estate or interest in real property or an interest or claim to personal property adverse to him, for the purpose of determining such adverse claim.

Utah Code Ann. §78-40-1 (1977)

STATEMENT OF THE CASE

Sweeney Land Company ("Sweeney" hereafter) commenced this action under Utah Code Ann. §78-40-1 (1977) to quiet title to property located in Park City, Utah. The property lies to the north of the Kimball Arts Center and to the south of where the town ski lift is located. The original dispute between the parties concerned a thirty-foot by one hundred sixty-foot strip of property running in an east and west direction from Park Avenue to Pacific Avenue. The thirty-foot strip is abutted on the north by property owned by Sweeney that is not part of the quiet title action. The thirty-foot strip is abutted on the south by property owned by the Defendants and Respondents, Gilbert Kimball and Maud Kimball ("Kimballs" hereafter), and Counterclaim-Crossclaimants and Respondents, Melvin Fletcher and Peggy Fletcher ("Fletchers" hereafter). (See Exhibit "A")

Prior to trial, Sweeney and Fletchers entered into a Stipulation dated May 31, 1984. (R. 322, 385) The parties quit-claimed to each other their respective claims and interests in the southern portion of the thirty-foot strip extending in an easterly direction approximately ninety-nine feet from Park Avenue ("thirty-foot strip" hereafter). The ownership interests to the remaining northern sixty-one feet of the thirty-foot strip are at issue in the quiet title action.

Sweeney appeals from the Judgment and Decree of Quiet Title (R. 395) (Exhibit "B") under which the trial court awarded the southern fifteen feet of the remaining thirty-foot strip to the Fletchers and awarded an undivided fifty percent interest to both Sweeney and Kimballs in

the northern fifteen feet of the remaining thirty-foot strip and a contiguous piece of property, approximately seventeen feet by thirty feet, located to the north of the thirty-foot strip. (See Exhibit "A")

Trial in this matter was held before the Honorable J. Dennis Frederick on September 5 and 6, 1985. The trial court entered its Findings of Fact and Conclusions of Law (R. 382) (Exhibit "C") and Judgment and Decree of Quiet Title (Exhibit "B") on December 4, 1985.

STATEMENT OF FACTS

Sweeney obtained ownership to the thirty-foot strip of property under a quit-claim deed dated August 11, 1980 from Sweeney Coalition Company to Sweeney Land Company. The deed was recorded in the Summit County Recorder's office on August 14, 1980. (Plaintiff's Exhibit 4, p. 116) In conjunction with the filing of its lawsuit, Sweeney recorded a Lis Pendens on April 2, 1981. (Plaintiff's Exhibit 4, p. 117)

Sweeney's predecessors in interest establish legal title ownership to the thirty-foot strip of property under deeds tracing the ownership and boundaries of the thirty-foot strip as far back as 1883. The deeds are contained in an abstract of title, Plaintiff's Exhibit 4 (T. 26), for Block 53 of Snyder's Addition to Park City, Utah. The thirty-foot strip is contained within Block 53.

Sweeney traced the boundaries of the thirty-foot strip from the legal descriptions contained in the deeds onto Plaintiff's Exhibit 3 consisting of a number of overlays on a base map known as the Sandborn Fire Insurance Map of 1907. (T. 26) This map was used as a base reference because it most accurately reflects the condition of the property in 1907. (Plaintiff's Exhibit 6; T. 26, 27)

The page references in the abstract of title to the deeds are as follows:

1. Page 4. Warranty Deed from George G. Snyder to Joseph P. Thiriot, recorded September 29, 1883. (T. 28)
2. Page 4 1/2. Warranty Deed from George G. Snyder to Park City Smelting Company, recorded February 19, 1885, (T. 28)
3. Page 13 1/2. Administrator's Deed of Wilson I. Snyder as Administrator of the Estate of George G. Snyder, deceased, to Edmund E. Thiriot, recorded July 22, 1892. (T. 28)
4. Page 14. Trust Deed from Edward E. Thiriot to O.J. Salisbury, recorded September 21, 1892). (T. 28)
5. Page 15. Trustee's Deed from John M. Harrington, Sheriff of Summit County, Utah, to First National Bank of Park City, recorded September 3, 1895. (T. 28)
6. Page 18. Warranty Deed from First National Bank of Park City to Nellie Theriot, recorded May 23, 1896. (T. 28)
7. Page 27. Warranty Deed from Nellie M. Theriot to Silver King Mining Company, recorded September 21, 1900. (T. 28)
8. Page 41. Deed from Silver King Mining Company to Silver King Coalition Mines Company, recorded June 4, 1907. (T. 29, 30)
9. Page 92. Deed and Conveyance from Silver King Coalition Mines Company to United Park City Mines Company, recorded May 26, 1953. (T. 29, 30)
10. Page 107. Quit Claim Deed from United Park City Mines Company to John J. Sweeney, recorded February 14, 1980.
11. Page 115. Quit Claim Deed from John J. Sweeney to Sweeney Coalition Company, recorded August 14, 1980.
12. Page 116. Quit Claim Deed from Sweeney Coalition Company to Sweeney Land Company, recorded August 14, 1980.

Sweeney and its predecessors in interest are the only entities to have paid taxes on the thirty-foot strip of property. Plaintiff's Exhibit 7 (T. 86) The tax records of Summit County as reflected in Plaintiff's Exhibit 7 establish the following payment of taxes on the thirty-foot strip.

1. 1910. Taxes assessed to and paid by Silver King Coalition Mining Company on a legal description described as "30 x 90 feet." (T. 86)
2. 1915. Taxes assessed to Silver King Coalition Mining Company. (T. 86)
3. 1920. Taxes assessed and paid by the Silver King Coalition Mining Company on a legal description described as "center of block." (T. 86).
4. 1928. Taxes assessed and paid by Silver King Coalition Mining Company on a legal description described as "center of block 53." (T. 86)
5. 1929. Taxes assessed to Silver King Coalition Mining Company on a legal description described as "center of block 53." (T. 86)
6. 1932. Taxes assessed to Silver King Coalition Mining Company on a legal description described as "center of block 53." (T. 86)
7. 1936. Taxes assessed to Silver King Coalition Mining Company on a legal description evidencing the 30 foot strip as the same 30 foot strip found in the 1907 warranty deed from Silver King Mines Company to the Silver King Coalition Mining Company. (T. 86)
8. 1939 - 1941. Taxes assessed to Silver King Coalition Mining Company on the same legal description set forth in the above-referenced 1907 warranty deed. (T. 86)
9. 1943. Taxes assessed to Silver King Coalition Mining Company on the same legal description as described in number 7 above. (T. 86)
10. 1944. Taxes assessed to Silver King Coalition Mining Company on the same legal description as described in number 7 above. (T. 86)
11. 1956. Taxes assessed to United Park Mines with a tax serial no., SA339. The legal description is found in the 1953 deed from Silver King Coalition Mining Company to United Park Mines. (T. 86)
12. 1961. Taxes assessed to United Park Mines under serial no., SA448 on the same legal description as described in the above-referenced 1953 deed. (T. 86)
13. 1973 - 1976. Taxes assessed and paid by United Park Mines on the same legal description as described in number 11 above. (T. 86)

14. 1977 - 1980. Taxes assessed and paid by United Park Mines on an abbreviated legal description referenced in the 1953 deed mentioned in number 11 above. (T. 86).

Kimballs and Fletchers own the property to the south of the thirty-foot strip of property. (See Exhibit "A") Kimballs own a ninety-eight by seventy-seven foot ("98' x 77'") parcel of property. Kimballs obtained their interest from a quit-claim deed from Summit County to Gilbert J. Kimball and Robert W. Kimball, dated and recorded on March 22, 1940. The deed describes a 98' x 77' parcel of property. (Plaintiff's Exhibit 4, p. 91; T. 31, 32) This principal parcel of property has always been described and confined to a 98' x 77' metes and bounds description.

Sweeney traced the boundaries and ownership to the 98' x 77' principal parcel on overlays 4 and 5 of Plaintiff's Exhibit 3 (T. 30-33). The following deeds from the abstract of title trace the ownership to the 98' x 77' principal parcel under a metes and bounds description. (T. 30-32)

1. Page 9. Warranty Deed from George E. Snyder to Edwin Kimball, recorded June 27, 1885. (T. 30-32)
2. Page 38. Settlement of Final Account and Decree of Final Distribution, recorded October 11, 1905. (References the 98' x 77' parcel by a metes and bounds description). (T. 29-32)
3. Page 44. Warranty Deed from Geneva A. Kimball to the Kimball Investment Company, recorded March 10, 1910. (T. 29-32)
4. Page 71. Warranty Deed from the Kimball Investment Company to R. T. Kimball, recorded October 19, 1925. (T. 29-32)
5. Page 73. Quit-Claim Deed from Robert T. Kimball and Amanda H. Kimball to Robert W. Kimball, recorded July 26, 1926. (T. 29-32)
6. Page 87. Warranty Deed from Robert W. Kimball to Sidney E. Mulcock, recorded November 18, 1929. (T. 29-32)
7. Page 88. Warranty Deed from Gilbert J. Kimball and Maude Kimball to Sidney E. Mulcock, recorded November 18, 1929. (T. 29-32)

8. Page 91. Quit-Claim Deed from Summit County to Gilbert J. Kimball and Robert W. Kimball, recorded March 22, 1940. (T. 29-32)

In 1956, Gilbert Kimball realized that his 98' x 77' parcel did not contain any of the property in the thirty-foot strip. He contacted the Summit County Recorder's office to see if he could enlarge the legal description of his 98' x 77' parcel. (Deposition of Gilbert Kimball, pp. 42, 43). For the next twenty years he did nothing to enlarge the 98' x 77' parcel. Gilbert Kimball continued to occupy and pay taxes on only the 98' x 77' parcel. (T. 73, 74, 150)

In 1976, Gilbert Kimball commissioned Robert Jones to survey his property and prepare a legal description which would include not only the 98' x 77' parcel but also the thirty-foot strip of property. (T. 53-57, 67; Deposition of Gilbert Kimball, p. 43). Kimball took Jones to the location of the thirty-foot strip and told him where the corners of the strip were located. (T. 55, 56, 63-65, 67; Deposition of Gilbert Kimball, p. 59) Jones prepared a survey for Kimball. (Plaintiff's Exhibit 8; T. 53, 54) Gilbert Kimball then had prepared and recorded a quit-claim deed which included both the 98' x 77' parcel and the thirty-foot strip of property. (Plaintiff's Exhibit 4, p. 101) A corrected quit-claim deed was recorded in 1977 (Plaintiff's Exhibit 4, p. 102).

From 1944 until 1980, Kimballs paid taxes on a 98' x 77' parcel of property. (T. 90-95, 121) Kimballs began paying taxes on the thirty-foot strip from the time of recording of the quit-claim deed in 1976.

Fletchers claim and establish a prescriptive easement to the thirty-foot strip of property for ingress and egress to their property. (R. 13) Fletchers also claim a co-tenancy interest in the Kimballs' 98' x 77' principal parcel of property. (R. 14-16)

A prescriptive easement is established from Fletcher's use of the thirty-foot strip of property as a driveway for ingress and egress to their property. (T. 65, 130, 174, 193) Fletchers never have claimed, nor established an ownership interest to the thirty-foot strip by adverse possession. Fletchers have never paid taxes on the thirty-foot strip of property. (T. 179) Fletchers claim to have paid taxes on the thirty-foot strip because of the co-tenancy issue between Fletchers and Kimballs. Using the co-tenancy issue, the Fletchers attempt to piggyback on the taxes paid by Kimballs on the 98' x 77' parcel to claim that taxes have been paid on the thirty-foot strip. (T. 181)

On February 15, 1984, the Fletchers tendered the sum of \$2,320.83 to the Kimballs by depositing the money with the clerk of the court. (R. 391; T. 146, 147) The money represents the payment of taxes by Kimballs on their 98' x 77' principal parcel of property from 1942 to the present. However, the only taxes the Kimballs paid on the thirty-foot strip were from the recording of the 1976 quit-claim deed in which the legal description encompasses the thirty-foot strip.

SUMMARY OF ARGUMENTS

The Judgment and Decree of Quiet Title (R. 395) and Findings of Fact and Conclusions of Law (R. 382) awarding the southern fifteen feet of the remaining thirty-foot strip to the Fletchers and awarding an undivided fifty percent interest to Sweeney and Kimballs in the northern fifteen feet of the remaining thirty-foot strip and a contiguous piece of property,

approximately seventeen feet by thirty feet, located to the north of the thirty-foot strip, is incorrect and should be reversed. The court should quiet title in the name of Sweeney in the approximately sixty-one feet of the thirty-foot strip along with the contiguous parcel located to the north.

Sweeney is the legal title owner to the thirty-foot strip of property. Sweeney establishes its ownership to the thirty-foot strip from the 1980 quit-claim deed from Sweeney Coalition Company to Sweeney Land Company and through its predecessors in interest. Kimballs failed to prove adverse possession to the thirty-foot strip because the only property the Kimballs have occupied and paid taxes is on the 98' x 77' parcel under a metes and bounds description.

Fletchers also fail to establish that they have adversely possessed the thirty-foot strip. Fletchers, however, do establish a claim for a prescriptive easement over the thirty-foot strip to obtain access to their property. Other than a prescriptive easement, the Fletchers fail to establish an ownership right to the thirty-foot strip of property. The taxes they tendered to the clerk of the court, on their co-tenancy issue with Kimballs, are taxes only assessed against the 98' x 77' parcel, and in no respect are assessed against the thirty-foot strip of property.

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO QUIET TITLE IN THE THIRTY-FOOT BY SIXTY-ONE FOOT STRIP OF PROPERTY IN THE NAME OF SWEENEY LAND COMPANY ALONG WITH THE ADDITIONAL CONTIGUOUS PIECE OF PROPERTY LOCATED TO THE NORTH OF SAID PROPERTY.

As a standard of review, this court will not disturb the trial court's findings of fact unless the evidence clearly preponderates against them. Dugan v. Jones, 39 Utah Adv. Rep. 37, 38, No. 20199 (August 7, 1986). The Judgment and Decree of Quiet Title along with the Findings of Fact and Conclusions of Law are not supported by the evidence presented at trial. Kimballs and Fletchers have failed to prove a claim for adverse possession to the thirty-foot strip of property. The evidence clearly preponderates against the court's awarding of an interest to them in the thirty-foot strip. The trial court erred in failing to quiet title to the thirty-foot strip of property along with the additional contiguous piece of property in the name of Sweeney.¹

A. SWEENEY'S OWNERSHIP INTEREST

Sweeney is the legal title owner of the thirty-foot strip of property under its quit-claim deed dated August 11, 1980. (Plaintiff's Exhibit 4, p. 116) The claim of ownership by any other party to the thirty-foot strip is subordinate to that of Sweeney's unless the occupant can meet the established elements of a claim for adverse possession set forth in Utah Code Ann. §78-12-7 (1977). See Olwell v. Clark, 658 P.2d 585, 587 (Utah 1982).

1

The trial court awarded an undivided fifty percent interest to Sweeney and Kimballs in a contiguous piece of property approximately seventeen feet by thirty feet. Throughout the trial, this piece of property was referred to as the Hershisier property. Sweeney's claim to the Hershisier property is limited to any rights which Fletchers have to the Hershisier property. Under the Stipulation between Sweeney and Fletchers (R. 322, 385), Fletchers conveyed whatever interest they may have in the Hershisier property to Sweeney. Sweeney claims no interest other than any right it may obtain from a court awarding an interest in the property to Fletchers. However, neither Fletcher nor Kimballs adversely possessed the Hershisier property.

The legal description in the Sweeney quit-claim deed encompasses the thirty-foot strip of property. Sweeney traced the ownership history and boundaries of the thirty-foot strip through the testimony of its expert witness. (T. 22-30) The deeds contained in the abstract of title, Plaintiff's Exhibit 4, establish the earliest traces of ownership of the thirty-foot strip from 1883 through the deed conveying the thirty-foot strip of property to Sweeney.²

Sweeney's expert witness traced the legal descriptions contained in the deeds onto Plaintiff's Exhibit 3. The expert prepared the exhibit to reflect the location of the thirty-foot strip from the legal descriptions contained in the deeds.

Finding of Fact No. 11 is incorrect in stating that Sweeney and its predecessors failed to pay taxes on the thirty-foot strip and that Sweeney failed to sustain its burden of proof. (R. 390) The evidence presented at trial is to the contrary. Sweeney and its predecessors paid the taxes on the thirty-foot strip. (Plaintiff's Exhibit 7; T. 86, 87, 93, 94, 95) Sweeney is the only party to have paid taxes on the thirty-foot strip.

B. KIMBALLS' OWNERSHIP INTEREST

Kimballs' claim of an ownership interest to the thirty-foot strip of property rests under the doctrine of adverse possession. There is no evidence to support a claim for adverse possession because Kimballs occupied and paid taxes on a 98' x 77' parcel of property to the south of the thirty-foot strip and never occupied and paid taxes on the thirty-foot strip for the statutory time period.

² A list of the deeds is contained in the Statement of Facts found at page 4.

Kimballs own a 98' x 77' parcel of property to the south of the thirty-foot strip under a quit-claim deed dated March 22, 1940 from Summit County to Gilbert J. Kimball and Robert W. Kimball.³ (Plaintiff's Exhibit 4, p. 91; Deposition of Gilbert Kimball, p. 42) (Exhibit "D") The description in that deed and the prior predecessors in interest to the 98' x 77' property establish that as early as 1885, a 98' x 77' metes and bounds description was used to establish the dimensions of this parcel of property.

Finding of Fact No. 8 states that in 1940, Robert W. Kimball and Gilbert J. Kimball purchased the property under a general legal description which did not completely and accurately describe the dimensions of the area that Summit County intended to convey and Kimballs intended to purchase. (R. 388) This finding is erroneous and is not supported by any evidence.

The quit-claim deed from Summit County to Robert W. Kimball and Gilbert J. Kimball refers to a 98' x 77' parcel of property which was sold for delinquent taxes for the years 1932, 1933, 1935, 1937 and 1938 in the name of Sidney Mulcock. (Exhibit "D") The very deeds under which Sidney Mulcock received the property in 1929 were from Robert W. Kimball and Gilbert J. Kimball with a 98' x 77' metes and bounds description. (Plaintiff's Exhibit 4, pp. 87, 88) (Exhibits "E" and "F")

In 1940, Gilbert Kimball and Robert W. Kimball purchased a 98' x 77' parcel of property. For the next thirty-six years Kimballs occupied and paid taxes on the 98' x 77' parcel of property. There is no evidence in the record to indicate that the Kimballs adversely possessed and paid taxes on the thirty-foot strip of property.

³ A history of the deeds on the Kimball 98' x 77' parcel is contained in the Statement of Facts at page 6.

As early as 1956, Gilbert Kimball was aware of the fact that the only property he owned was the 98' x 77' parcel of property. In his testimony he states that in 1956 he approached the Summit County Recorder's office to try and have the records include the thirty-foot strip of property. Nothing was done by the recorder's office or by Gilbert Kimball. (Deposition of Gilbert Kimball, pp. 42, 43).

In 1976, Gilbert Kimball employed Robert Jones to perform a survey of the property and provide Kimball with an enlarged legal description to include the thirty-foot strip. (Deposition of Gilbert Kimball, pp. 47, 54-57, 63, 64) Upon obtaining the enlarged legal description from the Jones survey, Gilbert Kimball had a quit-claim deed prepared in which the property description included the thirty-foot strip of property. The quit-claim deed was recorded on December 3, 1976 (Plaintiff's Exhibit 4, p. 101) and re-recorded to correct the legal description on September 7, 1977. (Plaintiff's Exhibit 4, p. 102)

Finding of Fact No. 8 states that in 1976, Gilbert Kimball commissioned a survey by Robert Jones of the property owned pursuant to the deed from Summit County which was executed and delivered in 1940 to Gilbert Kimball and Robert W. Kimball. (R. 388) The finding also states that the 1976 Jones survey accurately depicts the property intended to be conveyed to the Kimball brothers in 1940 by Summit County. (R. 388). This portion of the finding is erroneous. This finding is in direct contravention of Judge Frederick's ruling:

It is this court's judgment that the Defendants' Kimballs' reliance on the deeds between themselves in 1977 on the basis of the 1976 Jones survey is misplaced. Mr. Jones himself testified that his survey was based in large part on Gilbert Kimball's instructions as to what were the boundaries of the property, which I find to be in error. Accordingly, title is quieted on the 30-foot strip in the Defendants Fletcher. I find for similar

reasons that no claim to the Hershiser parcel is superior to that of the Plaintiff. Title to that parcel is quieted in the Plaintiff. (R. 439, court's ruling dated September 6, 1985).

Until 1976, the only property owned, occupied and possessed by Kimballs and on which they also paid taxes, was the 98' x 77' parcel of property. The metes and bounds description in the deed to Gilbert W. Kimball and Robert W. Kimball, along with the previous deeds on the property, establish a clear and unambiguous 98' x 77' metes and bounds description. The 98' x 77' metes and bounds description should control the claim of Kimballs to the thirty-foot strip of property. See Neeley v. Kelsh, 600 P.2d 979, 982 (Utah 1979); Dixon v. Morse, 93 Idaho 448, 463 P.2d 284, 286 (1970).

Kimballs should not be entitled to claim they have adversely possessed the thirty-foot strip of property because they never paid taxes on the thirty-foot strip. Kimballs paid taxes on a 98' x 77' parcel of property. They never paid taxes on the thirty-foot strip of property until their claim of ownership under the quit-claim deed in 1976. They then paid taxes on the property for five years. However, the recording of Sweeney's Lis Pendens on April 2, 1981, precludes Kimballs from claiming ownership by adverse possession beyond that point. See Utah Code. Ann. §78-12-12 (1977); Parsons v. Anderson, 690 P.2d 535, 538 (Utah 1984); Home Owners Loan Corp. v. Dudley, 105 Utah 208, 141 P.2d 160, 166 (1943).

C. FLETCHERS' OWNERSHIP INTEREST

Fletchers are entitled to a prescriptive easement over the thirty-foot strip for access to their property. Finding of Fact No. 10 is correct insofar as it establishes a right for the Fletchers to be awarded a

prescriptive easement. Finding of Fact No. 10 is incorrect to the extent that the evidence does not support a claim for adverse possession to the thirty-foot strip.

The record is replete with instances of Fletchers and others testifying that Fletchers used the thirty-foot strip as a driveway and road for ingress and egress to buildings contained on the Kimball 98' x 77' parcel and for access to his own property. (T. 65, 116, 130, 174, 193, 198, 199, 201; Deposition of Gilbert Kimball, pp. 20, 57) Fletchers occupied and used the property as a driveway and road for a period in excess of twenty years. The necessary elements for the court to award a prescriptive easement have been met. See Crane v. Crane, 683 P.2d 1062, 1065 (Utah 1984). Other than the right to a prescriptive easement, the Fletchers do not establish an ownership interest in the thirty-foot strip by adverse possession.

Finding of Fact No. 15 states that since 1942, the Kimballs paid property taxes on the 98' x 77' parcel of property along with the thirty-foot strip of property. (R. 391) This finding is not supported by the evidence. Since 1942 the Kimballs only paid taxes on a 98' x 77' parcel of property located to the south of the thirty-foot strip of property.

On February 15, 1984, Fletchers tendered to Kimballs one-half of the property taxes paid by Kimballs on the 98' x 77' parcel of property. There is nothing in the record to indicate that either Kimballs or Fletchers paid taxes on the thirty-foot strip of property. In fact, Melvin Fletcher testified that he has not paid taxes on the thirty-foot strip of property. (T. 179)


Fletchers may attempt to claim a co-tenancy interest in the payment of taxes on the 98' x 77' Kimball principal parcel of property. Although the Fletchers have never paid taxes on the thirty-foot strip of property. The only party who has paid taxes on the thirty-foot strip is Sweeney.

CONCLUSION

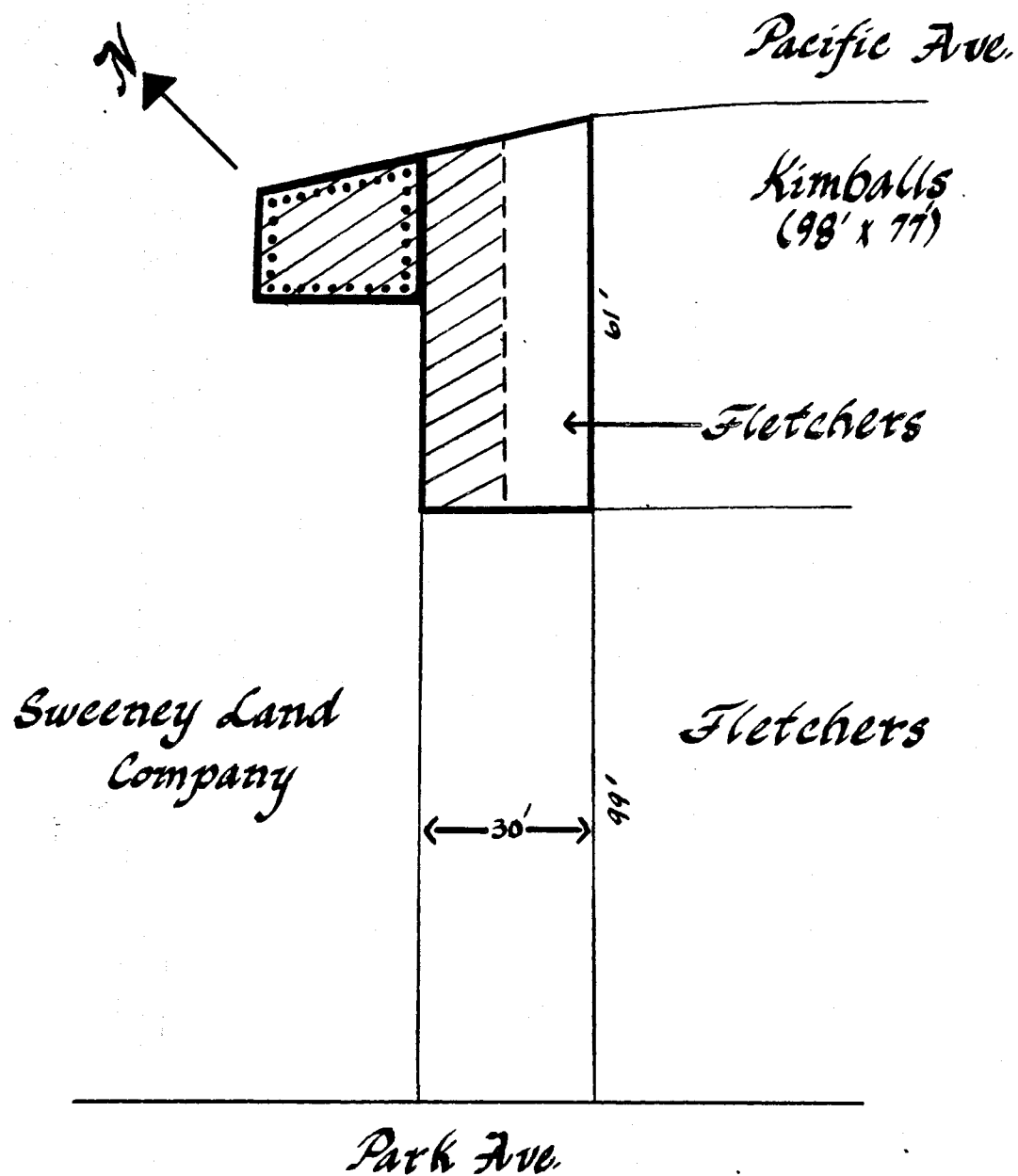
The Judgment and Decree of Quiet Title should be reversed and this court should quiet title in the name of Sweeney to the sixty-one feet by thirty-foot strip of property with the additional contiguous piece of property located to the north. The evidence clearly preponderates against the Findings of Fact and Conclusions of Law stating that Kimballs and Fletchers are entitled to an ownership interest in the thirty-foot strip of property.

RESPECTFULLY submitted this 29th day of September, 1986.

BIELE, HASLAM & HATCH


Paul D. Veasy
Attorneys for Plaintiff and
Appellant, Sweeney Land Company

ADDENDUM



 Sweeney Land co./Fletchers
50% - 50%

 Hershiser (17' x 30')

EXHIBIT NO. "A"

GERALD H. KINGHORN
KAPALOSKI, KINGHORN & PETERS
Attorney for Melvin and Peggy Fletcher
9 Exchange Place, Suite 1000
Salt Lake City, Utah 84111
Telephone: (801) 364-8644

IN THE THIRD DISTRICT COURT FOR
SUMMIT COUNTY, STATE OF UTAH

NO.
FILED

SWEENEY LAND COMPANY,

Plaintiff,

vs.

GILBERT and MAUD KIMBALL
et al.,

Defendants.

NOV 5 1985

Clerk of Summit County

BY.....
Deputy Clerk

JUDGMENT AND
DECREE OF
QUIET TITLE

GILBERT and MAUD KIMBALL,

Crossclaim Plaintiffs,

vs.

MELVIN FLETCHER and PEGGY
FLETCHER, et al.,

Counter-Crossclaimants.

Civil No. 6211

Based upon the Findings of Fact and Conclusions of Law on
file herein and good causing appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Title is quieted in Sweeney Land Company as to the following:

Parcel 1: Beginning at a point North 28°50' West 79.5 feet
from the Southwest corner of Block 53, Snyder's Addition to
Park City and running, thence North 61°14'19" East 99.03
feet, thence South 28°50' East 15.00 feet, thence South
61°14'19" West 99.03 feet to the Easterly side line of Park
Avenue, thence North 28°50' West 15.00 feet, more or less,
to the point of beginning.

Parcel 2: A 50% undivided interest in the parcel described as follows: Beginning at a point which is North 28°45'41" West, 64.5 feet and North 61°14'19" East 99.03 feet from the S.W. corner of Block 53, Snyders Addition to Park City, thence North 28°45'41" West 15.00 feet, thence North 61°10' East 33.90 feet; North 28°50' West 30.00 feet, thence North 64°11' East 17.00 feet, thence South 43°13' East 44.50 feet, more or less, to the Northeast corner of the parcel decreed to Melvin Fletcher and Peggy Fletcher herein, thence South 61°14'19" West 62.00 feet, more or less, along the North line of the land decreed to Melvin Fletcher and Peggy Fletcher herein to the point of beginning.

2. Title is quieted in the Defendant Maud Kimball as her sole and separate property to the following parcel of land.

Parcel 1: Beginning at a point North 23° 38' West 85.97 feet and North 33° 25' West 46.7 feet from the Southeast corner of Block 7, amended plat of Park City, Utah in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, thence South 61° 10' West 73.16 feet, thence North 28° 50' West 55.7 feet, thence North 61° 10' East, 70 feet more or less, thence South 33° 25' East, 58 feet more or less to the point of beginning.

Parcel 2: A 50% undivided interest in the parcel described as follows: Beginning at a point which is North 28°45'41" West, 64.5 feet and North 61°14'19" East 99.03 feet from the S.W. corner of Block 53, Snyders Addition to Park City, thence North 28°45'41" West 15.00 feet, thence North 61°10' East 33.90 feet; North 28°50' West 30.00 feet, thence North 64°11' East 17.00 feet, thence South 43°13' East 44.50 feet, more or less, to the Northeast corner of the parcel decreed to Melvin Fletcher and Peggy Fletcher herein, thence South 61°14'19" West 62.00 feet, more or less, along the North line of the land decreed to Melvin Fletcher and Peggy Fletcher herein to the point of beginning.

3. Title is hereby quieted and Melvin Fletcher and Peggy Fletcher as their sole and separate property in and to the following land:

Beginning at a point North 23°38' West 85.97 feet and North 33°25' West 46.70 feet from the Southeast corner of Block 7, Amended plat of Park City in Section 16 Township 2 South, Range 4 East, Salt Lake Base and Meridian, and South 61°10' West, 73.16 feet and North 28°50' West 55.7 feet to the true point of beginning;

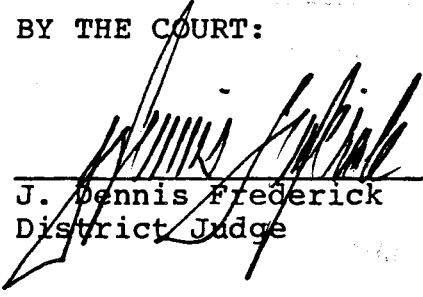
Thence along the following courses and distances:
North 28°50' West along the East boundary of the land

conveyed to Melvin Fletcher by Mary Workman a distance of 60.6 feet, thence North 61°10' East 61.93 feet, thence South 43° 13' East 15 feet, thence South 33°25' East 47.6 feet more or less, thence South 61°10' West 70 feet more or less to the true point of beginning.

Each party is to bear their own costs and attorneys fees.

DATED this 10 day of Oct. ~~October~~, 1985.

BY THE COURT:



J. Dennis Frederick
District Judge

GERALD H. KINGHORN
KAPALOSKI, KINGHORN & PETERS
Attorney for Melvin and Peggy Fletcher
9 Exchange Place, Suite 1000
Salt Lake City, Utah 84111
Telephone: (801) 364-8644

IN THE THIRD DISTRICT COURT FOR
SUMMIT COUNTY, STATE OF UTAH

NO.
FILED

SWEENEY LAND COMPANY,

Plaintiff,

vs.

GILBERT and MAUD KIMBALL
et al.,

Defendants.

NOV 5 1985

Clerk of Summit County

BY.....
Deputy Clerk

FINDINGS OF FACT
AND CONCLUSIONS
OF LAW

GILBERT and MAUD KIMBALL,
Crossclaim Plaintiffs,

vs.

MELVIN FLETCHER and PEGGY
FLETCHER, et al.,

Counter-Crossclaimants.

Civil No. 6211

On the 5th day of September, 1985, at 9:00 a.m. the issues raised in the pleadings between the parties came on regularly for non-jury trial before the Honorable J. Dennis Frederick, Judge, at the Summit County Courthouse, Coalville, Utah.

The Plaintiff was present and represented by counsel, Edward S. Sweeney and Paul D. Veasy of Behle, Haslam and Hatch, the defendant, counterclaimant and crossclaimant Maud Kimball was present in person and by counsel, Robert M. Felton. Defendants, counterclaimants and crossclaimants, Melvin and Peggy Fletcher

were present in person and were represented by Gerald H. Kinghorn of Kapaloski, Kinghorn & Peters.

Mr. Felton moved the Court for an order excluding witnesses from the Courtroom until called to testify. The motion was granted and the Court asked that each witness proposed by the parties, except the parties themselves, be sworn. The Court then admonished the witnesses to not discuss their testimony or the testimony of others except with counsel. The proposed witnesses were then excluded from the Courtroom.

Counsel for each party made a short opening statement. After the conclusion of the opening statements of counsel, Mr. Felton moved the Court for an order granting a judgment of quiet title to Maud Kimball for a portion of the property at issue generally described as the "Hershiser" parcel. After hearing the arguments of counsel, the Court denied the motion with leave to reconsider after hearing the evidence.

The parties presented a written stipulation to the Court signed by counsel for each party to permit the admission as evidence of the exhibits named in the stipulation, reserving the claims of the parties as to the relevance and/or materiality of the exhibits. The stipulation is the result of pretrial conferences between counsel for the parties where the stipulated exhibits were disclosed, reviewed, investigated and corrected where appropriate, to enable the parties to stipulate to the admission of the exhibits without the necessity of individual witness or document foundation for each exhibit. It is the

((

Based upon the testimony in open Court, the documents, surveys and affidavits entered into evidence, the candor and lack of candor, demeanor of the witnesses and parties and the equities in favor of or against each party apparent from the facts and circumstances established by the evidence, the Court makes the following:

FINDINGS OF FACT

1. The real property which is the subject of the claims of the parties is located in Block 53 of Snyders Addition to Park City as recorded in the office of the County Recorder of Summit County, Utah.

2. Block 53 of Snyders Addition to Park City as shown by the records of the Summit County Recorder was platted as a block of land without platting or dedication of interior streets or further subdivision into lots.

3. The Plaintiff and the Defendants Fletcher signed and filed a stipulation dated May 31, 1984. Sweeney Land Company and Melvin Fletcher and Peggy Fletcher have performed the execution and delivery of the deeds described in the stipulation.

4. Based on the pleadings herein, the parties claim unencumbered fee simple title to certain parcels of land generally described as follows:

Sweeney Land Co. claims title to a parcel of land approximately 30 feet in width extending from the east street line of Park Avenue in Park City as the westerly boundary, thence in a northeasterly direction thirty feet wide for approximately 164

feet (the 30 foot strip). Sweeney Land Company has quitclaimed 15 feet of the 30 foot strip south of the center line of the 30 foot strip to the Defendants Fletcher for a distance extending from East line of Park Avenue northeasterly for approximately 99 feet. The Fletchers have quitclaimed the north 15 feet of the 30 foot strip to Sweeney Land Co. and all the Fletchers interest in the "Hershiser" parcel. Sweeney Land Co. did not amend its pleadings thereafter.

Maud Kimball claims a large parcel of land including the warehouse area, the 30 foot strip and the Hershiser parcel as described more specifically in the Defendant Kimball counterclaim and crossclaim. The Kimball claim overlaps the east 65 feet of the Sweeney 30 ft. strip claim. The Hershiser parcel is the northern-most portion of the land claimed but does not conflict with the Plaintiff claim. (The "Hershiser-Kimball Parcel").

The Fletchers claim a 50% undivided interest as co-tenants with Maud Kimball to the "Hershiser-Kimball" parcel, the South 15 feet of the 30 foot strip deeded to them by Sweeney Land Company and as an alternative claim, a prescriptive easement for continued use as garage, storage space, parking and ingress and egress over, across and through the Hershiser-Kimball parcel adjacent to the east of the Fletchers home parcel. The ownership of the home area deeded to the Fletchers by Mary Workman is not at issue.

The present Fletcher claims are defined in the amended counter-claim and cross-claim filed by Fletchers after they

(

received a deed from Elizabeth W. Kimball in 1983, which described the same land as claimed by Maud Kimball.

5. For at least one hundred years prior to the filing of the complaint herein, properties were generally conveyed in the area of the subject properties without accurate surveyed or dimension specific legal descriptions and under general statements as to the location and dimensions of the subject properties. Under the circumstances, it is reasonable that the Court interpret the legal descriptions contained in the various instruments upon which the parties claims are based in a manner consistent with the physical location of buildings and objects in relation to each other, roads, improvements, dimensions described in the instruments and the actual possession of the properties by the parties and their predecessors in interest.

7. The 30 foot strip claimed by the Plaintiff Sweeney was conveyed to the Sweeney's predecessor, the United Park City Mines Co., in 1953 by the Silver King Coalition Mines Company and Park Utah Consolidated Mines Company by a deed which described the property as a 30 foot strip of land which began at the easterly side of Park Avenue and extended in a northerly direction for an indefinite distance to a point generally stated as a right-of-way granted under a specific deed dated November 13, 1883. The November 13, 1883 deed described in the conveyance to United Park City Mines Co. is not of record and there is no evidence of the terms or specific location of the right of way described in the missing deed. In 1953 when the deed to United Park Mines was

executed and delivered, the scalehouse and warehouse described in the legal description of the 30 foot strip were not in existence and therefore the northeasterly boundary of the 30 foot strip could not be identified.

8. In 1940 Robert T. Kimball and Gilbert Kimball purchased from Summit County certain interests in land in the area of the Hershiser-Kimball parcel. The area had been purchased in 1928 by Robert W. Kimball, the father of Robert T. Kimball and Gilbert Kimball. Robert W. Kimball conveyed the property to Robert T. Kimball. Robert and Gilbert thereafter deeded the property in a mortgage-deed transaction as security for a loan. Taxes on the property were not paid and the property ultimately was purchased by Summit County for taxes. In 1940 Robert T. Kimball and Gilbert Kimball purchased the Hershiser-Kimball parcel from Summit County under a general legal description which did not completely and accurately describe the dimensions of the area Summit County intended to convey and the Kimballs intended to purchase.

Robert T. Kimball and Gilbert Kimball were brothers and business partners in the Kimball service station and garage. In 1976, the Defendant Kimball commissioned a survey by Robert Jones of the property owned pursuant to the deed from Summit County executed and delivered in 1940 to Gilbert Kimball and Robert T. Kimball. The 1976 Jones survey accurately depicts the property intended to be conveyed to the Kimball brothers in 1940 by Summit County.

((

9. The plaintiff received a quitclaim deed from United Park City Mines in 1980 containing a land description which partially overlaps the property claimed by the Defendants Fletcher and Kimball; the Plaintiffs were on notice by virtue of the recordation of the deed by the Defendant Kimball of the overlap and the actual occupation and historic use of the area by Fletcher that title to the 30 foot strip was disputed. The Plaintiff and its predecessors in interest used and occupied no more than the north 15 feet of the 30 foot strip, for a distance of 99 feet extending from the easterly right of way line of Park Avenue.

10. Portions of the property claimed by Sweeney Land Co. and Kimball have been used and occupied by the Defendants Fletcher for a period in excess of 20 years openly and notoriously. The use of the Hershiser-Kimball property by the Defendants Fletcher and the Fletchers predecessor in interest was not under any agreement or permission from any person or entity. There is no credible evidence that the Fletchers use was not adverse to Kimballs and all others and therefore the use by Fletchers was and is adverse to the Kimballs. The area used and occupied openly, notoriously, adversely, and exclusively by the Defendants Fletcher is generally described as that area lying North of a line beginning at the Southeast corner of the land conveyed to Melvin H. Fletcher by his predecessor in interest and proceeding therefrom at a bearing of North 61° 10' East across the Kimball property to the gravel road depicted on the exhibits a distance

of approximately 71 ft. with the exception of a small stucco building located on the property which has been used by the Defendant Kimball since approximately 1940. No portion of the property described by the Kimball counterclaim has been occupied by the Kimballs with the exception of the stucco building indicated on the Exhibits within the last forty years.

The Defendants Fletcher occupied the area of the 30 foot strip claimed by the Defendants Kimball for a period in excess of 20 years and used the area for commercially valuable purposes including ingress and egress to their property, for parking of vehicles, for garage purposes and for the storage of household materials, garden utensils, hunting equipment and other miscellaneous, personal property.

11. The Plaintiff and its predecessors in interest paid property taxes for an area which was indefinite and therefore the Plaintiffs have failed to sustain their burden of proof that the Plaintiff paid property taxes on the entire 30 foot strip as claimed in the complaint. The payment of property taxes by the Plaintiff was consistent with the claims of the other parties and the legal description in the deed to United Park City Mines in 1953.

12. The Kimballs paid property taxes from 1977 to the present on the entire parcel described in the survey of property by Robert B. Jones.

13. Based on the testimony of Maud Kimball and the relevant deed language Gilbert J. Kimball and Maud Kimball intended

to create a joint tenancy interest between themselves by the execution and recordation of the deeds. Gilbert Kimball died prior to the trial of the matter and his joint tenant Maud Kimball survived him.

14. There is no evidence that Gilbert J. Kimball, Maud Kimball or any party on their behalf ever provided notice of any kind to Robert W. Kimball or his successors to the effect that Gilbert Kimball and Maud Kimball intended to adversely possess the Kimball parcel as against Robert W. Kimball; there is no instrument or other evidence of the conveyance of the co-tenant interest of Robert W. Kimball to Gilbert Kimball or Maud Kimball or conveyance of the interest of Robert W. Kimball to any party other than by operation of law to Robert's heir, Elizabeth Wilkins Kimball. In 1976, (the date of death of Robert W. Kimball) Robert Kimball had not received notice of any act of adverse possession or executed any instrument to convey the Kimball parcel; Robert Kimball possessed an undivided 50% interest in the Hershiser-Kimball parcel as more correctly described in the Robert B. Jones survey which is of record.

15. Since 1942 Gilbert Kimball and Maud Kimball have paid the property taxes on the Hershiser-Kimball parcel including the taxes due November 30, 1983 in the total amount of \$4,641.66. The record shows that on or about February 15, 1984, the Fletchers tendered the sum of \$2,320.83 to the Defendant Kimball by check to the Clerk of the Court where the funds tendered are on deposit. The Defendants Fletcher are indebted to the

Defendant Kimball for one half of the amount of all property taxes paid by the Defendant Kimball which is the sum of \$2,320.83 not including taxes for the years 1984 and 1985. The Defendants Fletcher owe an amount equal to one half of the property taxes for 1984 and 1985 to Maud Kimball.

Based upon the foregoing findings of fact the Court makes the following:

CONCLUSIONS OF LAW

1. The claim of each party must be sustainable on its own merits. Each claim should be evaluated based on a root of title or title by adverse possession where appropriate. The terms of the stipulation are reasonable and the stipulation should be approved and recognized by the Court and where otherwise appropriate made a part of the Decree of Quiet Title herein.

2. The Plaintiff is entitled to a decree of quiet title as its sole property to a strip of land north of the centerline of the 30 foot strip for a distance of 99.03 feet from the east right-of-way line of Park Avenue as platted in the plat of Snyders Addition to Park City. The Plaintiff may be entitled to a decree quieting title in the Plaintiff to a 50% undivided interest with Maud Kimball in the Hershisier parcel deeded to the Plaintiff by Defendants Fletcher together with a 50% undivided interest in the 15 feet North of the centerline of the 30 foot strip deeded to the Plaintiff by the Defendants Fletcher. Because the pleadings of the Plaintiffs do not state a claim for quiet title as a co-tenant with Maud Kimball or for partition of

the co-tenant interests the decree herein should not define an interest other than the interest of record in the office of the Summit County Recorder.

3. The Defendants Melvin Fletcher and Peggy Fletcher are the successors-in-interest to the co-tenant interest of Robert W. Kimball as conveyed to them by his heir Elizabeth W. Kimball. It is reasonable that the interests of the co-tenants be partitioned in a manner consistent with the reasonable use of the property by each co-tenant and in a manner which will preserve the economic value for each party in a roughly equal manner. The decree of quiet title should partition the Hershisier-Kimball parcel to quiet title in Melvin Fletcher and Peggy Fletcher to the portion of the Hershisier-Kimball parcel described as follows:

Beginning at a point North 23°38' West 85.97 feet and North 33°26' West 46.70 feet from the Southeast corner of Block 7, Amended plat of Park City in Section 16 Township 2 South, Range 4 East, Salt Lake Base and Meridian, and South 61°10' West, 73.16 feet and North 28° 50" West 55.7 feet to the true point of beginning;

Thence along the following courses and distances: North 28°50' West along the East boundary of the land conveyed to Melvin Fletcher by Mary Workman a distance of 60.6 feet, thence North 61°10' East 61.93 feet, thence South 43° 13' East 15 feet, thence South 33°25' East 47.6 feet more or less, thence South 61°10' West 70 feet more or less to the true point of beginning.

4. The area of the Hershisier-Kimball parcel which is South of the Fletcher partition parcel described above should be partitioned to Maud Kimball as her sole and separate property.

Gilbert Kimball and Maud Kimball were joint tenants in the 50% undivided interest purchased by Gilbert in 1940 and therefore upon Gilbert's death any interest of Gilbert terminated and Maud became the sole owner of the 50% undivided interest in the Hershisser-Kimball parcel. A decree of quiet title should issue to Maud Kimball as follows:

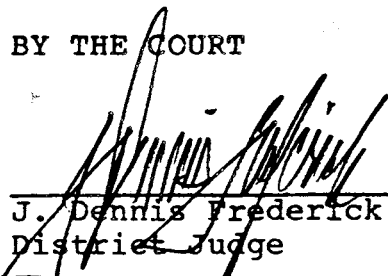
Beginning at a point North 23° 38' West 85.97 feet and North 33° 26' West 46.7 feet from the Southeast corner of Block 7, amended plat of Park City, Utah in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, thence South 61° 10' West 73.16 feet, thence North 28° 50' West 55.7 feet, thence North 61° 10' East, 70 feet more or less, thence South 33° 25' East, 58 feet more or less to the point of beginning.

Maud Kimball should also be decreed a 50% undivided interest as a co-tenant with Sweeney Land Company as the owner of a 50% undivided interest in the Hershisser parcel as described in the exhibits and to the balance of the land north of the extended center line of the 30 foot strip immediately adjacent to the parcel of land quieted to Melvin Fletcher and Peggy Fletcher above.

5. It is reasonable that each party bear its own attorneys fees and costs and therefore no award of attorneys fees or costs should be made to any party against the other.

DATED this 14th day of October, 1985:

BY THE COURT


J. Dennis Frederick
District Judge

Western States Title Company

P.O. Box 714, Park, City, Utah 84060

Telephone 801-649-8777

Page No. 91

SUMMIT COUNTY, A
municipal corporation
of the State of Utah

-to-

GILBERT J. KIMBALL and
ROBERT W. KIMBALL,

QUIT CLAIM DEED

Entry No. 66568

Recorded March 22, 1940

Book G, Page 224

Dated March 22, 1940

Cons: \$48.00 and \$2.00 for
the deed

CONVEY & QUIT CLAIMS:

All its right, title and interest acquired under tax sale
for the years 1932-3-5-7-8, the following described property in
Summit County, Utah, to-wit:

98 feet by 77 feet on Block 53 of Snyder's Addition to Park
City, Utah.

The above property was sold for delinquent taxes for the
years 1932, 3, 5, 7 and 1938 inclusive in the name of Sydney Mulcock
and an auditors deed taken by Summit County.

This deed is made under authority of Section 80-10-68
Revised States of Utah, 1933 and pursuant to an order of the Board
of County Commissioners, duly passed on the 4th day of March,
1940.

Witness:
Chas L. Frost
(SEAL)

Signed: SUMMIT COUNTY, a municipal
corporation of the State of Utah

By: John E. Wright Clerk

Ack'd March 22, 1940, regularly before Mae R. Tree, County Recorder,
(Seal)

(SHOWN FOR INFORMATION)

EXHIBIT NO. "D"

THOMAS HOMER
BONDED ABSTRACTER

PHONE WASATCH 5692

87
404 So. STATE STREET

WARRANTY DEED.

Robert W. Kimball

Recorded Nov. 18, 1929.

-to-

In Book "0", page 596.

Sidney E. Mulcock.

Dated Sept. 25, 1929.

Consideration \$10.00, etc.

Describes:- Part of Block 53, Snyder's Addition to Park City, Summit County, Utah, beginning on the westerly line of Utah Eastern right of way (formerly called D. & R. G. right of way) located as follows:

Beginning at a point on the east line of Park Ave. 369.9 feet west of the southwest corner of the southeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 16, Township 2 South, Range 4 East, Salt Lake Meridian, thence north 28 deg. 50' west 58.5 feet; thence north 63 deg. 49' east 172.8 feet to west line of Utah Eastern railroad right of way, which is the point of beginning of this description; thence south 42 deg. 12' east 2.2 feet; thence south 33 deg. 25' east 96.2 feet along the west line of said right of way; thence south 63 deg. 56' west 81 feet, more or less, to east line of land conveyed to A. R. Fletcher, thence northerly on line parallel to Park Ave., 98 feet, more or less; thence north 63 deg. 49' east 72.9 feet, more or less, to the place of beginning. In the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of Section 16, Township 2 South, Range 4 East, Salt Lake Meridian.

Signed:-Same as above.

Acknowledged O. K.

EXHIBIT NO. "E"

THOMAS HOMER
BONDED ABSTRACTER

88

PHONE WASATCH 5692

404 So. STATE STREET

WARRANTY DEED.

Gilbert J. Kimball
and Maude Kimball, his wife.

Recorded Nov. 18, 1929.

In Book "0", page 597.

-to-

Dated Sept. 25, 1929.

Sidney E. Mulcock.

Consideration \$10.00, etc.

Describes:- (Same property as described in Book "0",
page 596.) see page 87

Signed:- Same as above.

Acknowledged Sept. 25, 1929.

EXHIBIT NO. — "E"

AFFIDAVIT OF MAILING

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

PAUL D. VEASY, being duly sworn, says:

That he is employed in the office of Biele, Haslam & Hatch, P.C. attorneys for Plaintiff and Appellant, Sweeney Land Company.

That he mailed four (4) true and accurate copies of Plaintiff and Appellant's Brief upon the parties to the within described action by placing a true and correct copy thereof in an envelope addressed to

Robert Felton, Esq.
Attorney for Defendants and Respondents,
Gilbert Kimball and Maud Kimball
5 Triad Center, Suite 585
Salt Lake City, Utah 84180

Gerald Kinghorn, Esq.
KAPALOSKI, KINGHORN & PETERS
Attorneys for Counterclaim-crossclaimants and
Respondents, Melvin Fletcher and Peggy Fletcher
9 Exchange Place, Suite 1000
Salt Lake City, Utah 84111

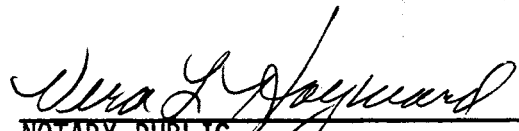
and by placing the same with the United States Post Office, first class, postage prepaid, on the 29th day of September, 1986.



SUBSCRIBED AND SWORN to before me this 29th day of September, 1986.

My Commission Expires:

1-9-89



NOTARY PUBLIC
Residing at 